

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
JACK E. AND RUTH L. GRISHAM }

Appearances:

For Appellants: Jack E. Grisham, in pro. per.

For Respondent: James C. Stewart
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Jack E. and Ruth L. Grisham against a proposed assessment of additional personal income tax in the amount of \$1,012.52 for the year 1974.

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The sole issue for determination is whether appellants have substantiated their entitlement to a casualty loss greater than \$15,000.

Appellant Jack E. Grisham and his former wife purchased approximately 65 acres of residential mountain property near Banning, California, in 1964 for \$42,000. The land was covered by brush and some large trees. Improvements on the land consisted of a small owner's house, a small guest house, a shop, a garage, a storage shed, a well and a small stable.

In August 1974, a fire swept across the property and burned most of the brush and trees, as well as the small guest house. Appellant and his former wife were separated at the time of the fire, and they were working on a marital property settlement. In that regard, appellants received an appraisal of the land in December 1974 from James Thompson and Associates, a local real estate broker, which placed the value of the property before the fire at \$100,000, and after the fire at \$85,000. The appraiser had inspected the land in May 1974.

In his income tax return for the year 1974, appellant claimed a \$25,000 casualty loss because of the fire damage to his property. Upon audit, respondent disallowed \$10,000 of the claimed loss and issued a proposed assessment. Respondent's action reflects its reliance upon the appraisal by James Thompson and Associates. Appellant obtained a new appraisal in 1977, which placed a \$139,000 value on the property before the fire, and a \$78,000 value after the fire. Respondent argues that the first appraisal more accurately reflects the amount of casualty loss suffered by appellant. This appeal followed.

Under section 17206 of the Revenue and Taxation Code, appellant is allowed a deduction for loss sustained during the taxable year which is not compensated by insurance or otherwise. Here the amount of casualty loss is the difference between the value of the property before the fire, and the value immediately after the fire. As we held in Appeal of Jack Caplan, decided by this board on June 28, 1977, the taxpayer claiming a casualty loss deduction under this section bears the burden of proving his entitlement. Under respondent's regulations, such proof is necessary in order to fix the amount of casualty loss suffered, and is generally ascertained through benefit of a competent appraisal. (See Cal. Admin. Code, tit. 18, reg. 17206(g), subd. (2).) Here the problem is that the two appraisals, both made by competent appraisers,

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reach highly divergent results. Respondent states that its continued reliance on the first appraisal is based upon the fact that: (1) the first appraisal was made primarily for other than tax purposes, and (2) it was made by a competent appraiser who inspected the property shortly before and shortly after the fire.

Respondent contends that the fact that the appraisal was made for marital settlement purposes gives it credibility separate and apart from any resulting tax consequences. In addition, respondent maintains that the time of the first appraisal and the methodology used both adhere more closely than does the second appraisal to recognized guidelines set out by the case of du Pont v. United States, 67-1 U.S.T.C., ¶ 9237 (D. Del. 1960, revd. and remanded on other grounds, 385 F.2d 780 (3rd Cir. 1967)). In du Pont, the court stated that an appraiser must consider the duration of time in which nature might be expected to repair the damage to the land, either in whole or part, and must consider the future potential of the property. Respondent asserts that the second appraisal diverted from the du Pont standard in many regards, most notably by failing to consider the relatively short period of time in which nature would be expected to repair the fire damage. Respondent also contends that the future potential of the land in regard to the availability of water was not adequately addressed by the second appraisal. Lastly, respondent raises the point that the second appraisal should be discredited by virtue of the fact that it was made three years after the fire by an out-of-vicinity appraiser, in contrast to the first appraisal made by a local real estate broker who viewed the property directly before and after the fire.

It is well settled that deductions are a matter of legislative grace, and in order to prevail, the taxpayer must show that he is entitled to the deduction. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 1348] (1934).) Appellant makes an offer of proof that the photographs which he has submitted at the hearing and at times prior to, serve as evidence of the additional destruction of his property. We cannot agree. Although the photographs do exhibit casualty loss, it is not clear that the degree of damage exemplified was any more excessive than accounted for in the Thompson appraisal.

Although we sympathize with appellant's position, we must agree with respondent in its reliance on the first appraisal and find that appellant has been allowed all the casualty loss which he has proven.

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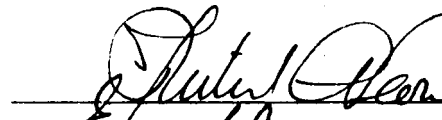
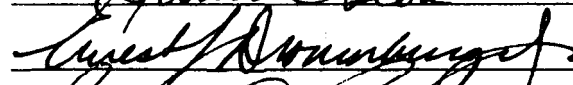
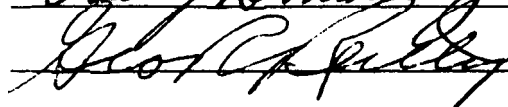
In light of the fact that appellant has presented no additional proof that the \$10,000 in excess of the \$15,000 allowed by respondent was properly deducted, we must sustain respondent's disallowance of this part of the total casualty loss deduction.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Jack E. and Ruth L. Grisham against a proposed assessment of additional personal income tax in the amount of \$1,012.52 for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of April , 1980, by the State Board of Equalization.

 _____, Chairman
 _____, Member
 _____, Member
_____, Member
_____, Member